

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 2:06-0163

ANTWONNE D. WHITE

MEMORANDUM OPINION AND ORDER

Pending is the defendant's "Notice of Appeal of Order of Detention[,]" filed July 31, 2006.

The statutory basis identified for the "appeal" is a portion of 18 U.S.C. § 3142(f), which provides pertinently as follows:

The [detention] hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.

18 U.S.C. § 3142(f).

Inasmuch as defendant has apparently forsaken the traditional statutory appeal process governing the review of detention orders, the present "appeal" is more appropriately characterized as a motion to reconsider the original determination made by the magistrate judge. Such a request,

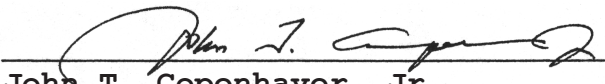
which offers new information in support of a proposed modification to an existing order, is better handled by the judicial officer who heard the matter originally.

A textual analysis of the statutory excerpt relied upon by the defendant, which refers to "the judicial officer[,]" supports the view that the judicial officer who presided over the detention inquiry originally is best suited to address any matters raised in a re-opened proceeding. See generally, 18 U.S.C. § 3142(f). Courts and commentators alike are in accord concerning this reading. See, e.g., United States v. Cisneros, 328 F.3d 610, 614 (10th Cir. 2003); 9B Federal Procedure § 22:1873 (2006) ("By its terms, this section applies to reconsideration of a detention or release order by the same judicial officer who entered the initial order.").

The court, accordingly, ORDERS that the "Notice of Appeal of Order of Detention" be, and it hereby is, re-characterized as a motion directed to the magistrate judge to reconsider her July 6, 2006, detention order.

The Clerk is directed to forward copies of this written opinion and order to the United States Magistrate Judge, the defendant, all counsel of record, the United States Probation Department, and the United States Marshal.

DATED: August 1, 2006

  
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John T. Copenhaver, Jr.  
United States District Judge